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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/894,789

06/28/2001

Frank J. Ponzio, Jr.

4640-104

5974

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7590

10/04/2006

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EXAMINER

OSMAN, RAMY M

ART UNIT

PAPER NUMBER

2157

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/894,789

Applicant(s)

PONZIO

Examiner

Ramy M. Osman

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 71-90 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 71-90 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of the Claims***

1. This communication is in response to amendment filed on July 13, 2006, where applicant amended claims 71-90. Claims 71-90 are pending.

### ***Response to Arguments***

2. Applicant's arguments filed 7/13/2006 have been fully considered but they are moot in view of new grounds of rejection.
3. Applicants arguments regarding 112 second paragraph rejection is not persuasive. It is contradictory to say that on the one hand the data is accessed for analysis, and then on the other hand grading the analysis is done without accessing the data. This cannot be the case because the data was accessed for the analysis in the first place therefore grading is done with accessing the data (for the analysis step). Applicants claim language is indefinite and fails to resolve this contradiction.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 71 and 81 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regards to lines 7-11, it is unclear how one can analyze content of data (which inherently involves accessing it) and then mention that the analysis was done without accessing

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the data. The wording of the claim is confusing and appears contradictory. Applicant must use explicit and detailed language to clearly explain the invention and its scope.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. **Claims 71-90 rejected under 35 U.S.C. 102(e) as being anticipated by Moon (US Patent No 6,944,123).**

8. In reference to claims 71 and 81, Moon teaches a method and corresponding system for determining and signaling content quality of preexisting independently created digital data independent of a user, between at least two digital devices including a digital source and a digital receiver, the preexisting independently created digital data having a plurality of data records, each of the plurality of data records having a plurality of data fields, the method comprising the following steps:

accessing remotely the preexisting independently created digital data (column 6 line 60 – column 7 line 10 and column 18 line 35 – column 19 line 27);

analyzing the quality of the content of preexisting independently created digital data to determine quality of the content without user interaction (column 6 line 60 – column 7 line 10 and column 18 line 35 – column 19 line 27);

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grading results of the analysis without accessing the preexisting independently created digital data and without user interaction, the grade indicative of the quality of the content of the preexisting independently created digital data using at least one or more predefined sets of criteria (column 6 line 60 – column 7 line 10 and column 18 line 35 – column 19 line 27); and,

marking the grading results in at least one form without changing and without accessing the preexisting data (column 6 line 60 – column 7 line 10 and column 18 line 35 – column 19 line 27);

wherein a first digital receiver without user interaction dynamically evaluates the marked grade of the preexisting independently created digital data without accessing the preexisting digital data to determine suitability from the marked grade for subsequent use of the preexisting independently created digital data (column 6 line 60 – column 7 line 10 and column 18 line 35 – column 19 line 27).

9. In reference to claims 72 and 82, Moon teaches the method and system of claims 71 and 81 respectively, further comprising the step of:

remarking the grading results in at least one form without changing and without accessing the preexisting digital data and without user interaction, the remark indicative of the quality of the content of the preexisting independently created digital data using at least one or more different predefined sets of criteria; whereby another digital receiver without user interaction can independently determine suitability from the remarked grade for another subsequent use of the preexisting independently created digital data without accessing the preexisting independently created digital data (column 19 line 45 – column 20 line 30).

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10. In reference to claims 73 and 83, Moon teaches the method and system of claims 71 and 81 respectively, further comprising the steps of:

regrading the results of the analysis without accessing the preexisting data; marking the regrading results in at least one form without changing and without accessing the preexisting data, the mark of the regrading results indicative of the quality of the content of the preexisting independently created digital data using at least one or more different predefined sets of criteria; whereby another digital receiver can independently determine suitability from the mark of the regrading results for another subsequent use of the preexisting independently created digital data without accessing the preexisting independently created digital data (column 19 line 45 – column 20 line 30).

11. In reference to claims 74 and 84, Moon teaches the method and system of claims 71 and 81 respectively, further comprising the steps of: associating a portion of a file name to the marking (column 9 line 60 – column 10 line 20).

12. In reference to claims 75 and 85, Moon teaches the method and system of claims 71 and 81 respectively, wherein the quality of the content corresponds to a particular data field of the plurality of data fields (column 10 lines 1-45).

13. In reference to claims 76 and 86, Moon teaches the method and system of claims 71 and 81 respectively, wherein the quality of the content corresponds to a particular record of the plurality of data records (column 19 line 45 – column 20 line 30).

14. In reference to claims 77 and 87, Moon teaches the method and system of claims 71 and 81 respectively, wherein at least one of the one or more predefined sets of criteria is a predefined function (column 19 line 45 – column 20 line 30).

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15. In reference to claims 78 and 88, Moon teaches the method and system of claims 71 and 81 respectively, wherein at least one of the one or more predefined sets of criteria accesses an independent database (column 8 line 35 – column 9 line 15).

16. In reference to claims 79 and 89, Moon teaches the method and system of claims 71 and 81 respectively, wherein at least one of the one or more predefined sets of criteria for determining the quality of the content is an externally defined function (column 19 line 45 – column 20 line 30).

17. In reference to claims 80 and 90, Moon teaches the method and system of claims 71 and 81 respectively, wherein the mark is a numeric value, a color, or a Boolean (column 7 lines 1-10).

### *Conclusion*

18. Applicant is advised that the above specified citations of the relied upon prior art are only representative of the teachings of the prior art, and that any other supportive sections within the entirety of the reference (including any figures, incorporation by references, and claims) is implied as being applied to teach the scope of the claims.

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

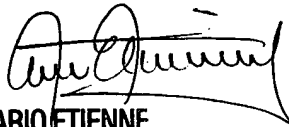
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramy M. Osman whose telephone number is (571) 272-4008.

The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RMO  
October 1, 2006

  
**ARIO ETIENNE**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2157**